

## **MEMORANDUM**

**To:** Members of the City Commission

**From:** Lisa Agnor, City Manager

**Date:** October 21, 2016

**Subject:** Approval of an agreement with the Marshall Chamber of Commerce for occupancy of space in the Marshall Visual Art Center

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As you know, the lease agreement with the Chamber of Commerce for office space at the Marshall Visual Art Center expired on July 31, 2016. The terms of that agreement allowed the Chamber to provide a service supporting the Wonderland of Lights in lieu of a monthly cash payment.

Following a meeting between Carolyn Howard, Director of Tourism, Main Street & Downtown Development and Chamber Executive Director, Stormy Nickerson, a proposed one-year agreement was presented to the Commission for consideration at the September 22, 2016 meeting. Attached is a copy of this proposal, along with Exhibit "A", which outlined the in-kind services that the Chamber agreed to provide during the period of August 1, 2016 through July 31, 2017. After discussion by the Commission, City Staff was directed to meet again with the Chamber and negotiate an agreement which would include rental payment of \$750 per month, in addition to the proposed in-kind services.

Following this second meeting between City Staff and Chamber representatives, a counter-proposal was presented by the Chamber of Commerce. A copy of the counter-proposed rental agreement is attached for your consideration. Stormy Nickerson, Chamber Executive Director, will join us at the meeting to make a presentation of this proposal and answer any questions the Commission may have.

**LEASE AGREEMENT**  
**CITY OF MARSHALL AND CHAMBER OF COMMERCE**

This Lease Agreement is made and entered into to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Marshall, Texas, ("City"), and the Marshall Chamber of Commerce, ("Chamber"),

**Recitals.**

Whereas, the City is the owner of the property commonly known as Marshall Visual Art Center ("MVAC"), located at 208 E. Burlleson; and

Whereas, the Chamber is an independent, non-profit corporation established and existing under the laws of the State of Texas for the purpose of promoting the development and attraction of the Marshall area of Harrison County, Texas; and

Whereas, the City has agreed to lease to the Chamber and the Chamber has agreed to lease from the City certain office space located in the MVAC building; and

Whereas, the City Commission finds that the Chamber's use of the MVAC building is beneficial to the general welfare of the City and benefits the Chamber's operations by providing an economical location for the Chamber office; and

Now, Therefore, In consideration of the covenants, terms and conditions set forth herein, the parties agree and covenant as follows:

**Section 1**

**Grant.**

The City leases to the Chamber as-is that certain office space located in the front portion of the MVAC ("Premises").

**Section 2**

**Term.**

The term of this Lease shall commence on August 1, 2016, and shall continue for a period of one (1) year from that date. **Notwithstanding the foregoing, the Chamber agrees and understands that the City may terminate this Lease at any time by giving the Chamber sixty (60) days written notice to vacate the premises.**

**Section 3**

**In-Kind Services, Levies And Utilities.**

**3.1 In-Kind Services.**

In lieu of monetary rental payment for occupancy of space in the Premises, the Chamber agrees to provide the in-kind services listed in the attached Exhibit "A".

**3.2 Levies.**

The City shall pay when due all assessments, water charges, sewer charges, and electricity charges assessed against the Premises.

**3.3 Utilities And Other Services.**

1. During the term of this Lease, the City shall supply the Premises with a reasonable amount of air conditioning and heating as required by the season. The City shall also provide its usual light, electrical power and water, as now installed. Any repair work needed on the above-listed utility services shall be provided by the City at no expense to the Chamber.

2. All other services required by the Chamber shall be at the sole expense of the Chamber.

**Section 4  
Occupancy And Use.**

4.1 The Chamber agrees to use and occupy the Premises pursuant to all rules and regulations prescribed by the City.

4.2 The Chamber shall not permit the Premises or any part thereof to be used for any improper, immoral or objectionable purposes.

**Section 5  
Quiet Enjoyment Of Premises, Alterations And Surrender.**

**5.1 Covenant Of Quiet Enjoyment.**

The City covenants and agrees that the Chamber, upon observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept, observed and performed, shall lawfully and quietly hold, occupy and enjoy the Premises (subject to the provisions of this Lease) without hindrance by the City.

**5.2 The City's Duty To Maintain Premises.**

The City shall be responsible for maintaining and repairing the structural components of the Premises, except to the extent such structural components are damaged by the Chamber, its agents, employees or invitees. The Chamber agrees to promptly notify the City of any observed structural defects.

**5.3 Use Of The Premises.**

The Chamber shall not use the Premises in a manner that would violate any federal, state or local laws. The Chamber further covenants not to do or suffer any waste or damage, disfigurement or injury to the Premises, or to any fixtures and equipment located therein.

**5.4 Alterations And Additions.**

The Chamber shall have the right to make such other alterations, additions and improvements to the Premises as it shall deem necessary, provided that the Chamber shall have obtained the prior written consent of the City, which consent shall not be unreasonably withheld.

**5.5 Surrender.**

Upon the termination of this Lease, the Chamber shall surrender possession of the Premises to the City in good condition and repair, ordinary wear and tear excepted.

**Section 6  
Assignment, Sublease And Liens.**

The Chamber shall not assign this Lease in whole or in part, or sublet the Premises or any part of the Premises without the prior written consent of the City.

**Section 7  
Insurance.**

The Chamber shall procure and maintain at its own expense during the term of this Lease the types and amounts of insurance as shall be required by the City Manager, with insurance companies authorized to do business in Texas. The City shall be named as an additional insured on all such policies. The Chamber may, subject to the review and approval of the City Manager, provide self-insurance to the extent that the Chamber's assets meet levels greater than those required by the City Manager.

The Chamber expressly understands and agrees that any insurance protection furnished by it hereunder shall in no way limit its responsibility to indemnify and save harmless the City under the provisions of Section 8 of this agreement.

**Section 8  
Indemnification.**

8.1 The Chamber agrees to defend, indemnify and hold the City, its officers, officials, agents and employees, completely harmless from and against any and all claims arising by reason of injury or death of any person or damage to property resulting from the Chamber's use or occupancy of the Premises, or the acts or omissions of the Chamber's

officers, agents, employees, contractors, subcontractors or licensees, except to the extent caused by the negligence or willful misconduct of the City, its agents or employees. Upon notice from the City of any claim which the City believes to be covered hereunder, the Chamber shall timely appear in and defend all suits brought upon such claim and shall pay all costs and expenses incidental thereto, but the City shall have the right, at its option and at its own expense, to participate in the defense of any suit, without relieving the Chamber of any of its obligations under this agreement.

8.2 This section shall survive expiration of this Lease and the expiration of any obligations owing to any party under this Lease.

**Section 9  
Miscellaneous Provisions.**

**9.1 Partial Invalidity.**

If any covenant, condition, provision, term or agreement of this Lease is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining covenants, conditions, provisions, terms and agreements of this Lease shall not be affected thereby, but each covenant, condition, provision, term or agreement of this Lease shall be valid and in force to the fullest extent permitted by law.

**9.2 Governing Law.**

This Lease shall be construed and be enforceable in accordance with the laws of the State of Texas.

**9.3 Binding Effect Of Lease.**

The covenants, agreements and obligations contained in this Lease shall extend to, bind and inure to the benefit of the parties and their representatives, successors and assigns.

**9.4 Authorization To Execute Lease.**

The persons executing this Lease represent and warrant that they are duly authorized and acting representatives of the City and the Chamber respectively, and that by their execution of this Lease, it became the binding obligation of the City and the Chamber respectively, subject to no contingencies or conditions except as specifically provided in the agreement.

**9.5 Entire Agreement.**

This Lease constitutes the entire agreement of the City and the Chamber with respect to the subject matter of this Lease, and no act or omission of the City or the Chamber shall alter, change or modify any of the provisions in the agreement. Any amendments, changes or modifications of this Lease shall be effective only when made in writing and executed by authorized officers of the parties.

IN WITNESS WHEREOF, the parties have caused the Lease Agreement to be executed by their respective and appropriate officials on this the \_\_\_\_\_ day of \_\_\_\_\_, 2016, to be effective on the dated for the term herein provided.

ATTEST:

THE CITY OF MARSHALL, TEXAS

BY: \_\_\_\_\_  
CITY SECRETARY

BY: \_\_\_\_\_  
CITY MANAGER

ATTEST:

MARSHALL CHAMBER OF COMMERCE

BY: \_\_\_\_\_  
SECRETARY/TREASURER

BY: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT "A"

Marshall Main Street and Marshall Convention & Visitors Bureau  
and  
Greater Marshall Chamber of Commerce

In lieu of a monthly rental payment and utility payment for the office space in the Marshall Visual Art Center located at 208 E. Burluson Street, Marshall, Texas, 75670, Marshall Main Street and Marshall Convention & Visitors Bureau on behalf of the City of Marshall enters in to the agreement shown below with the Greater Marshall Chamber of Commerce for the period of October 1, 2016 to September 30, 2017.

1. Ten Chamber volunteers will be provided to work at the **Wonderland of Lights Lighted Parade**.

*Why: This parade included over 150 entries in 2015. Volunteers are needed for registration and line-up. Volunteers are needed to "walk" the parade with the entries.*

*Date: Saturday, December 3, 2016*

*Time: Probably 5:00 p.m. until Santa arrives!*

2. Five to ten Chamber volunteers will volunteer to decorate **Santa's workshop**.

*Why: Several thousand children, including tourists, will visit Santa's workshop during Wonderland of Lights. There is a Chair of the workshop who will guide volunteers in creating a magical place. This is not working Santa's workshop, it is creating the workshop before the grand opening on November 23. The workshop is inside a building on North Washington next to Infield. Heat and air are provided.*

*Date. Beginning late October 2016 thru mid-November 2016*

*Stormy Nickerson will be contacted when volunteers are needed and those that can come will be welcomed with scissors and glitter and sustenance!*

*Time: To be determined.*

3. The Chamber of Commerce will decorate the outside of their **front door area** for the holidays. Carolyn Howard visited with Susan Pool/creator of "The Art Event" and a tenant at the Visual Arts Center, about additional décor on the rest of the building façade. Carolyn will work with the city on lighting this unique historic property.

*Why: Wonderland of Lights covers 40 days. The City welcomes thousands of guests. We need to look our best. The Visual Arts Center is an historic landmark. Marshall Main Street is committed to preserving and celebrating such treasures. Holiday lighting The adaptive re-use of this historic property.*

*Date: Completed by opening night, Wednesday, November 23, 2016.*

4. Board members/commission members of Marshall Main Street, Marshall CVB and the

Greater Marshall Chamber of Commerce will celebrate their unique mission with a **gathering at the Visitor Center.**

*Why: The Visitor Center is undergoing improvements; therefore, we want to introduce the community, again, to the existing and future growth of the Center. More important, the partnership between these organizations is vital to future successes of the community. This gathering will encourage understanding of our unique roles in business and visitor growth.*

*Date: To be determined*

*Time: To be determined*

5. Staff of the Chamber has graciously given **tours of the Visual Arts Center.**

*Why: It is impossible to have CVB staff at the Visual Arts Center every time a guest or potential renter walks in the door. The gracious hospitality offered by Chamber staff allows for consistent coverage of the center.*

6. Marshall Main Street, a **member of the Greater Marshall Chamber of Commerce.**

*Why: Marshall Main Street's mission is the revitalization of Marshall's historic downtown area. This includes business and job growth similar to the Chamber's mission. The community needs to understand that and realize the power of the two entities working together.*

Approved by Stormy Nickerson  
Executive Director  
Greater Marshall Chamber of Commerce  
September 14, 2016

Proposed to Carolyn Howard  
Executive Director  
Marshall Main Street  
Marshall Convention & Visitors Bureau  
September 14, 2016

## RENTAL AGREEMENT

The City of Marshall  
and  
The Greater Marshall Chamber of Commerce

The City of Marshall and the Greater Marshall Chamber of Commerce enter into the following agreement for the lease of the office space with all existing utilities in the Marshall Visual Art Center located at 208 E. Burlison Street, Marshall, Texas, 75670, for the period of November 1, 2016 to October 31, 2017.

1. Greater Marshall Chamber of Commerce will provide on-site staffing for the **Visual Art Center** from 9:00a.m. - 4:00p.m. Monday-Friday except city holidays and designated Chamber holidays. In the last 60 days, The Greater Marshall Chamber of Commerce Executive Director, Stormy Nickerson, and Senior Events Associate, Kim Brown, have provided assistance to visitors, artists, renters and the Harrison County Sherriff's Department workers as early as 7:45 a.m. and as late as 6:00p.m. often each week.  
*Why: It is impossible to have City of Marshall staff travel to the Visual Art Center every time a guest, potential renter, vendor or Visual Art Center artist walks in the door and needs assistance unless the City of Marshall hires an additional staff member to work on site or moves an existing staff member to this location. The staff of the Greater Marshall Chamber of Commerce allows for consistent coverage of the center.*  
*Approximate value: If a new full-time City of Marshall staff member is hired to work onsite to handle all operations of the Marshall Visual Art Center \$32,448 includes salary, benefits and retirement.*
2. Based on the square footage of the Marshall Visual Art Center currently being utilized by the Greater Marshall Chamber of Commerce and current overall usage of the facility by various entities, the Greater Marshall Chamber of Commerce will make a payment of \$300 per month made payable by the 10<sup>th</sup> of the calendar month for the use of the office space and utilities in the front of the Marshall Visual Art Center.  
*Actual Cash Value: \$3,600*
3. Five Chamber volunteers will work at the **Wonderland of Lights Lighted Parade**.  
*Why: This parade included over 150 entries in 2015. Volunteers are needed for registration and line-up. Volunteers are needed to walk the parade with the entries.*  
*Date: Saturday, December 3, 2016, 5:00 p.m. until the arrival of Santa.*  
*Approximate cash value to the City of Marshall: five employees @ \$10/hr = \$50 per hour x 4 hours = \$200 value*
4. The Chamber of Commerce will decorate the outside of their **front door area only** per Carolyn Howard for the Wonderland of Lights.  
*Why: The Visual Art Center is a historic landmark with visitors throughout the Wonderland season.*  
*Date: Completed by opening night, Wednesday, November 23, 2016.*  
*Approximate cash value: \$200 Staff Labor and decorations*

5. Five Chamber volunteers will volunteer ten hours each to decorate Santa's workshop as available.

*Why: Several thousand children, including tourists, will visit Santa's workshop during Wonderland of Lights. This is not working Santa's workshop, it is creating the workshop before the grand opening on November 23.*

*Date: Beginning late October 2016 thru mid-November 2016. Chamber of Commerce Director Stormy Nickerson will be contacted by the CVB when volunteers are needed.*

*Approximate value: five employees @ \$10/hr = \$50/hr x 10 hours = \$500 value.*

6. Board members/commission members of Marshall Main Street, Marshall CVB and the Greater Marshall Chamber of Commerce will celebrate their unique mission with a gathering at the Visitor Center.

*Why: The Marshall Convention & Visitors Bureau requests this gathering to introduce the partnership between these organizations to the community. This gathering will encourage understanding of the unique roles of each organization in business and visitor growth.*

*Date and Time: To be determined*

*Approximate value: \$200 Staff Labor Hours*

Approximate value of this agreement to The City of Marshall,  
Marshall Main Street, and The Marshall Convention & Visitors Bureau  
**\$37,398.00**

\_\_\_\_\_  
Ms. Lisa Agnor, City Manager  
City of Marshall

\_\_\_\_\_  
Date

\_\_\_\_\_  
Stormy Nickerson, Executive Director  
Greater Marshall Chamber of Commerce

\_\_\_\_\_  
Date